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IN THE
Supreme Court of the United States

OCTOBER TERM, 1996

IN RE: DENISE RENEE BEASLEY.

FIDELITY FINANCIAL SERVICES, INC.,
v. *Petitioner,*

RICHARD V. FINK, Trustee,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit

BRIEF *AMICI CURIAE* OF THE AMERICAN
AUTOMOBILE MANUFACTURERS ASSOCIATION,
THE ASSOCIATION OF INTERNATIONAL
AUTOMOBILE MANUFACTURERS, THE NATIONAL
AUTOMOBILE DEALERS ASSOCIATION, AND THE
AMERICAN FINANCIAL SERVICES ASSOCIATION,
IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF *AMICI CURIAE*¹

The American Automobile Manufacturers Association
 ("AAMA") is a trade association whose three members,

¹ Pursuant to Proposed Rule 37.6 of the United States Supreme Court Rules, the AAMA, AIAM, NADA, and AFSA state that no other person or entity, other than the AAMA, AIAM, NADA, and AFSA, contributed to the cost of preparing and submitting this brief.

Chrysler Corporation, Ford Motor Company and General Motors Corporation, manufacture automobiles for sale in the United States. Through their finance subsidiaries, each of AAMA's members finances the purchase of millions of motor vehicles each year. AAMA represents its members for the purpose of promoting the general commercial, legislative and other interests of the membership. AAMA has no parent company, subsidiaries, or affiliates that have issued shares or debt securities to the public.

The Association of International Automobile Manufacturers ("AIAM") is the trade association representing the United States subsidiaries of international automobile companies doing business in the United States. AIAM's members are: American Honda Motor Co., Inc.; American Suzuki Motor Corporation; BMW of North America, Inc.; Fiat Auto U.S.A., Inc.; Hyundai Motor America; Isuzu Motors America, Inc.; Kia Motors America, Inc.; Land Rover North America, Inc.; Mazda Motor of America, Inc.; Mercedes-Benz of North America, Inc.; Mitsubishi Motor Sales of America, Inc.; Nissan North America, Inc.; Porsche Cars North America, Inc.; Rolls-Royce Motor Cars Inc.; Subaru of America, Inc.; Toyota Motor Sales, U.S.A., Inc.; Volkswagen of America, Inc.; and Volvo North America Corporation. AIAM represents its members for the purpose of promoting the general commercial, legislative and other interests of the membership. Like the members of the AAMA, these foreign-owned car makers finance the purchase of thousands of cars annually. AIAM has no parent company, subsidiaries, or affiliates that have issued shares or debt securities to the public.

The National Automobile Dealers Association ("NADA") is a trade association representing both car and truck dealers that are primarily engaged in the retail sale of new and used motor vehicles, both foreign and domestically produced. NADA members are also engaged in automotive service, repair and parts sales. NADA represents these members for the purpose of promoting gen-

eral commercial, legislative and other interests of the membership, as well as providing insurance and other services to its membership. NADA has no parent company, subsidiaries, or affiliates that have issued shares or debt securities to the public.

The American Financial Services Association ("AFSA") is the nation's largest trade association representing non-bank providers of consumer financial services. Organized in 1916, AFSA represents 360 companies operating over 10,000 offices engaged in extending consumer credit. AFSA's members include credit card issuers, independently-owned consumer finance companies, diversified financial service companies and automobile finance companies. Consumer finance companies provide one quarter of all consumer credit outstanding in the United States. AFSA has no parent company, subsidiaries, or affiliates that have issued shares of debt securities to the public.

The AAMA, AIAM, NADA, and AFSA collectively represent thousands of members who are involved on a daily basis in the sale and financing of new and used automobiles. As such, these members also are involved in tens of thousands of Chapter 7, Chapter 11, and Chapter 13 bankruptcy cases, many of which present the preferential transfer and perfection issue to be decided in this case.

SUMMARY OF ARGUMENT

Section 547(c)(3) of the Bankruptcy Code² exempts from recovery as a preference purchase money security interests and liens that are "perfected on or before 20 days after the debtor receives possession of" the financed

² The United States Bankruptcy Code is codified at Title 11 of the United States Code. For ease of reference, the text of this brief refers only to sections of the "Bankruptcy Code" or the "Code." These section references translate without alteration to section references in Title 11 of the United States Code, i.e., section 547(c)(3)(B) of the Bankruptcy Code is codified at 11 U.S.C. § 547(c)(3)(B).

property. 11 U.S.C. § 547(c)(3)(B). The court below erroneously determined that Fidelity Financial Service, Inc. ("Fidelity") perfected its security interest outside the time period allowed by the Bankruptcy Code.

Section 301.600.2 of the Missouri Revised Statutes governs perfection in Missouri of a security interest and lien in motor vehicles. This section provides that perfection occurs by delivery of a properly completed application for title to the Missouri director of revenue. Where the delivery of the application is completed within thirty days of the creation of the lien and security interest on the vehicle, the Missouri statute provides that the lien and security interest are perfected as of the time of their creation. Because Fidelity delivered its completed application for title to the Missouri director of revenue within thirty days of the creation of the lien and security interest on the Debtor's vehicle, Fidelity's lien and security interest were perfected for purposes of state law at the moment of their creation on August 17, 1994. As such, the court below erred in failing to give effect to the provisions of Missouri Revised Statute section 301.600.2 and to exempt Fidelity's properly and timely perfected lien and security interest from avoidance pursuant to section 547(c)(3) of the Bankruptcy Code.

ARGUMENT

The result in this case is determined by the clear and unambiguous language of the Bankruptcy Code. The Bankruptcy Code sets forth a framework for determining the existence of a voidable preference. In this case, whether there is a voidable preference depends upon when Fidelity's security interest and lien were perfected. The Code's definition of "perfected" necessarily and undisputably directs the application of state law. Application of the state law at issue here, which is identical in substance to the law in several other states, determines that Fidelity's security interest in the Debtor's automobile was perfected within twenty days of the date that the Debtor took possession of the vehicle. Accordingly, the Eighth

Circuit Court of Appeals erred in concluding that Fidelity's lien and security interest are avoidable as a preferential transfer, and this Court must reverse the judgment of the Eighth Circuit. This is the only result permitted by this Court's rules of statutory construction, and it is the only result that furthers the policy of consistent and uniform application of the law.

I. THE DIRECTIVE OF THE BANKRUPTCY CODE IS CLEAR AND UNAMBIGUOUS.

Section 547(b) of the Bankruptcy Code allows a trustee in bankruptcy to avoid as a preference certain transfers from a debtor to its creditors. However, the Code further provides that, though a transfer may be otherwise avoidable as a preference under section 547(b), the trustee cannot avoid a transfer that meets the requirements of one of the eight individual subsections of section 547(c). The issue in this appeal is whether section 547(c)(3) protects Fidelity's security interest. Section 547(c)(3) states:

(c) The Trustee may not avoid under this section a transfer— . . .

(3) that creates a security interest in property acquired by the debtor—

(A) to the extent such security interest secures new value that was—

(i) given at or after the signing of a security agreement that contains a description of such property as collateral;

(ii) given by or on behalf of the secured party under such agreement;

(iii) given to enable the debtor to acquire such property; and

(iv) in fact used by the debtor to acquire such property; and

(B) that is perfected on or before 20 days after the debtor receives possession of such property.

11 U.S.C. § 547(c). Both Fidelity and the Trustee agree that each of the elements of section 547(c)(3)(A) are met by Fidelity in this case. Thus, the sole dispute in this case is whether Fidelity's lien and security interest were "perfected on or before 20 days after the debtor receive[d] possession" of the automobile.

A. Congress Has Narrowly Defined The Term "Perfected" In Section 547.

Congress chose to define the operative term "perfected" in section 547(e)(1)(B) of the Bankruptcy Code as follows:

For purposes of [section 547]— . . . a transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

11 U.S.C. § 547(e)(1)(B). This definition, by its clear terms, does not describe an action; rather, it describes the circumstance or status of being perfected. Congress in section 547(e)(1)(B) made no attempt to describe the *act of becoming* "perfected." Thus, the term "perfected," as defined and used in section 547, is not a verb, "perfected" as defined and used in section 547 is an adjective describing the superior lien position of a secured creditor with regard to its particular collateral. Accordingly, the question in this appeal is *not* whether Fidelity, within the twenty days allowed under section 547(c)(3)(B), had completed the last legally necessary act required by state law to *become* perfected. Instead, the inquiry requires the identification of the date on which Fidelity's lien and security interest, as a matter of state law, first became clothed with the status of being "perfected" such that under state law a creditor on a simple contract could not

have acquired a judicial lien in the Debtor's motor vehicle superior to Fidelity's perfected security interest.

B. State Law Determines The Date That A Security Interest Is Perfected.

As this Court and others have recognized, Congress left to the discretion of the individual states the question of how and at what time a creditor becomes perfected.³ *McKenzie v. Irving Trust*, 323 U.S. 365, 370, 65 S. Ct. 405, 408, 89 L.Ed. 305, 309 (1945) (holding that state law determines "the precise time when a transfer is deemed made or perfected"). See also *In re Hesser*, 984 F.2d 345, 348 (10th Cir. 1993); *In re Busenlehner*, 918 F.2d 928, 930 (11th Cir. 1990), *cert. denied*, *Moister v. General Motors Acceptance Corp.*, 500 U.S. 949, 111 S. Ct. 2251, 114 L.Ed.2d 492 (1991); *In re Hamilton*, 892 F.2d 1230, 1232 (5th Cir. 1990). In this regard, Missouri Revised Statute § 301.600.2 (1994) states, in relevant part:

A lien or encumbrance on a motor vehicle or trailer is perfected by the delivery to the director of revenue of the existing certificate of ownership, if any, an application for a certificate of ownership . . . , and the required certificate of ownership fee. It is perfected as of the time of its creation if the delivery of the aforesaid to the director of revenue is completed within thirty days thereafter, otherwise as of the time of the delivery.

It is undisputed in this case that (a) Fidelity's lien and security interest in the Debtor's automobile were created on August 17, 1994; (b) the Debtor also took possession of the automobile on August 17, 1994; and (c) Fidelity delivered the required papers to the director of revenue

³ Although courts are uniform in their agreement that state law controls the time of perfection, some courts nonetheless refuse to follow through and actually apply state law. See *In re Walker*, 77 F.3d 322, 323 (9th Cir. 1996 (noting correctly that state law determines time of perfection, but applying incorrect analysis)).

on September 7, 1994, which is twenty-one days after the date on which Fidelity's lien and security interest were created and the Debtor took possession of the automobile. Thus, under Missouri law, it is undisputed that on August 17, 1994, no creditor on a simple contract could have acquired a judicial lien superior to Fidelity's perfected security interest in the Debtor's automobile. Because the Debtor also took possession of the automobile on August 17, 1994, under the plain language of sections 547(c)(3)(B) and 547(e)(1)(B) of the Bankruptcy Code, Fidelity's security interest and lien were "perfected on or before 20 days after the debtor receive[d] possession" of the automobile.

The foregoing analysis is identical to that of the Tenth and Eleventh Circuit Courts of Appeals in *In re Hesser*, 984 F.2d at 348, and *In re Busenlehner*, 918 F.2d at 930, respectively.⁴ This is the only analysis supported by the clear and unambiguous language of the Bankruptcy Code.

II. THE CLEAR AND UNAMBIGUOUS LANGUAGE OF THE BANKRUPTCY CODE MUST CONTROL THIS CASE.

As this Court has long recognized, a court of law should not reach out to find a different result when the plain and unambiguous language of a statute directs a particular outcome (the "Plain Language Rule"). *E.g.*, *United States v. American Trucking Associations, Inc.*, 310 U.S. 534, 543, 60 S. Ct. 1059, 1063, 84 L.Ed. 1345, 1350-51 (1940); *Caminetti v. United States*, 242 U.S. 470, 485, 37 S. Ct. 192, 194, 61 L.Ed. 442, 452 (1917). The court of appeals below, and the cases it relied upon, did not follow this basic rule of construction. As such, the results of these cases do not do justice to the clear language of the Code, and the judgment of the Eighth Circuit must therefore be reversed.

⁴ See also, *In re Harley*, 41 B.R. 276, 281 (Bankr. N.D. Ga. 1984) (applying correct analysis); *In re Burnette*, 14 B.R. 795, 797 (Bankr. E.D. Tenn. 1981) (same).

A. This Court Regularly Applies The Plain Language Rule To The Bankruptcy Code.

In *United States v. Ron Pair Enterprises, Inc.*, 498 U.S. 235, 109 S. Ct. 1026, 103 L.Ed.2d 290 (1989), this Court was asked to disregard the clear language of the Bankruptcy Code in favor of a result that was arguably supported by pre-Bankruptcy Code law. The respondent in *Ron Pair* argued that a nonconsensual secured claim should be treated differently from a consensual secured claim under section 506(b) of the Bankruptcy Code, despite the fact that the Bankruptcy Code made no distinction between the two. This Court rejected respondent's argument, noting:

The task of resolving the dispute over the meaning of [the Bankruptcy Code] begins where all such inquiries must begin: with the language of the statute itself. In this case, it is also where the inquiry should end, for where, as here, the statute's language is plain, "the sole function of the courts is to enforce it according to its terms." (Internal citations omitted.)

489 U.S. at 235, 109 S. Ct. at 1030, 103 L.Ed.2d at 298. This Court has made similar pronouncements in other cases involving the Bankruptcy Code. See *Union Bank v. Wolas*, 502 U.S. 151, 158, 112 S. Ct. 527, 531, 116 L.Ed.2d 514, 522 (1991) (rejecting argument contrary to language of section 547(c)(2), noting "that Congress may not have foreseen all of the consequences of a statutory enactment is not a sufficient reason for refusing to give effect to its plain meaning"); *Barnhill v. Johnson*, 503 U.S. 393, 401, 112 S. Ct. 1386, 1391, 118 L.Ed.2d 39, 48 (1992) (relying upon language of Bankruptcy Code, noting "appeals to statutory history are well-taken only to resolve 'statutory ambiguity'").

Ignoring the well-settled precedent from this Court, the Eighth Circuit and the cases that court relied upon chose not to follow the Plain Language Rule. Thus, as discussed

below, the Court should disregard these cases and apply the plain language of the Code.

B. *In Re Loken* Did Not Follow The Plain Language Rule And Was Wrongly Decided.

The Eighth Circuit's opinion in this case relied exclusively upon the reasoning of the Ninth Circuit's Bankruptcy Appellate Panel in *In re Loken*, 175 B.R. 56, 61 (B.A.P. 9th Cir. 1994). In *Loken*, the court followed, up to a point, the identical analysis set forth in Part I of this brief, including the critical recognition that state law controls the method and timing of perfection. *Id.* at 60-61. However, *Loken* departed from the correct analysis when it concluded that Congress' definition of "perfection" in section 547(e)(1)(B) refers to that specific point in time "when the transferee takes the last step required by state law to perfect its security interest." *Id.* at 61-62.

The analysis in *Loken* is ill-conceived. There is obviously no reference whatsoever in section 547(e)(1)(B) of the Bankruptcy Code to the "last step required by state law." By its clear terms, section 547(e)(1)(B) defines only what it means to *be* "perfected." To conclude otherwise requires a needless stretch of interpretation. If Congress wanted to describe a specific point in time by reference to "the last step required by state law," it could have easily done so. Instead, by the clear and natural reading of section 547(e)(1)(B), Congress described only the status of being "perfected," and left the question of "how" and "when" to the individual states. Nonetheless, the *Loken* court insisted upon reading beyond the plain meaning of the Code and, as a result, it reached an impermissible result.

The clear language of section 547(e)(1)(B) begs the question of why the *Loken* court felt compelled to reach beyond the statutory language. On this score, the court suggested that its definition of "perfected" is more consistent with the statute as a whole and that courts reaching

a different conclusion haven taken the word "perfected" out of context. *Id.* at 61-62. However, the court's only support for this suggestion was that the "general usage" of the term "perfected" refers to a single moment in time. *Id.* at 62. The court then noted, as its only example, that use of the term "perfected" in the Oregon State statute refers to a specific point in time. *Id.* The court's reference to state law reveals the circular nature of its argument. State law *must* define the single point in time at which a creditor first becomes perfected because federal law does *not*.

In the end, the opinion in *Loken* was result-driven. Rather than follow the plain language of section 547(e)(1)(B), the court went to great lengths to extrapolate a different outcome. Nonetheless, the *Loken* court ultimately failed to offer any reason why a creditor, such as Fidelity in this case, should not enjoy the full benefits of state law when Congress has not exercised its authority to command a different result.

C. Other Cases Arguably Supporting The Eighth Circuit's Opinion Are Either Wrong Or Inapplicable.

In addition to the opinion of the Ninth Circuit's Bankruptcy Appeal Panel in *Loken*, the Trustee may rely upon two circuit court opinions, *In re Walker*, 77 F.3d 322 (9th Cir. 1996), and *In re Hamilton*, 892 F.2d 1230 (5th Cir. 1990), to support the Eighth Circuit's decision in this case. These cases should not influence the Court.

Following the opinion in *Loken*, the Ninth Circuit issued an opinion on this issue in *In re Walker*, 77 F.3d 322 (9th Cir. 1996). However, this opinion does not bolster, or even apply, the analysis in *Loken*. Instead, the *Walker* opinion merely concludes that "the Code gives [20] days, not 30, in which to perfect a transfer. In bankruptcy, the [Bankruptcy] Code trumps the law of the state." *Id.* at 323. The Ninth Circuit necessarily, and incorrectly, assumed a conflict between federal and state law. There is no such conflict.

As noted, the “when” and the “how” of perfection is decided by state law. *McKenzie*, 323 U.S. at 370, 65 S. Ct. at 408, 89 L.Ed.2d at 309. Accordingly, if a state has enacted a “relation back” perfection statute, that statute does not conflict with the Bankruptcy Code. The twenty days allowed by section 547(c)(3)(B) of the Bankruptcy Code provide a “grace period” within which the creditor’s perfected status will save the creditor’s lien and security interest from avoidance by a trustee. By contrast, the number of days (in this case, thirty days) allowed by a state law “relation back” perfection statute establish the amount of time a creditor has to ensure that it will be perfected “as of” the day the lien first was created. As discussed above in Part I the purposes of the “grace period” in the Code and “relation back” provisions in state law are related, but different; they work together, not in opposition.

Illustrative of this point is the Fifth Circuit’s opinion in *In re Hamilton*, 892 F.2d 1230 (5th Cir. 1990). In *Hamilton*, unlike the present case, the Fifth Circuit was faced with a Texas law twenty-day “grace period” statute rather than a twenty-day “relation back” statute. By its terms, the Texas statute did *not* render a creditor perfected “as of” the date it first created its lien. *Id.* at 1232 n.7. Further, the Texas statute expressly foreclosed the rights of a bankruptcy trustee provided the creditor filed its certificate within twenty days. *Id.* Thus, the twenty-day “grace period” in *Hamilton* arguably conflicted with what was then a ten-day “grace period” in the Bankruptcy Code.⁵ The Fifth Circuit concluded that the Bankruptcy Code prevails. *Id.* at 1230.

⁵ The Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, amended section 547(c)(3)(B) of the Bankruptcy Code to increase from ten days to twenty days the grace period provided for in that section. The Bankruptcy Reform Act of 1994 became effective on October 22, 1994, and applies to bankruptcy cases commenced on or after that date.

Although it is unclear whether the Fifth Circuit’s opinion in *Hamilton* rested upon the distinction between a “grace period” statute and a “relation back” statute, that distinction is critical, and it renders *Hamilton* inapplicable to this appeal.⁶ Clearly, the United States Constitution reserves to Congress the power to legislate in the area of bankruptcy. U.S. Const. art. I § 8. Any attempt by a state to duplicate the function of the Bankruptcy Code would be subject to appropriate constitutional challenge. A “relation back” statute, however, does not duplicate the function of section 547(e)(1)(B) of the Bankruptcy Code. Rather, “a relation back” statute merely fulfills a function that the Bankruptcy Code leaves up to the states—defining the first date that a creditor’s lien and security interest may not be displaced in priority by a judicial lien obtained by a creditor suing on a simple contract. As such, *Walker* and *Hamilton* are either unpersuasive or irrelevant to the proper analysis in this appeal and, once again, the plain language of the Bankruptcy Code must prevail.

⁶ The Fifth Circuit recently relied upon *Hamilton* in deciding *In re Locklin*, 101 F.3d 435, 442 (5th Cir. 1996). Unlike *Hamilton*, *Locklin* involved a true “relation back” statute (Alabama Code section 32-8-61). The Fifth Circuit, however, did not address the distinction between “relation back” statutes and “grace period” statutes. Therefore, the opinion in *Locklin*, like the Ninth Circuit’s opinion in *Walker*, incorrectly assumed a conflict between the Bankruptcy Code and state “relation back” statutes. As noted above, and below in Part III.A of this brief, the Court should not assume that state “relation back” statutes conflict with the Bankruptcy Code.

III. EVEN IF THE PLAIN LANGUAGE OF THE BANKRUPTCY CODE DID NOT CONTROL THIS CASE, OTHER RULES OF STATUTORY CONSTRUCTION AND STRONG POLICY CONSIDERATIONS REQUIRE THAT FIDELITY PREVAIL IN THIS APPEAL.

The plain language of the Bankruptcy Code should control this appeal.⁷ Nonetheless, additional reasons require the same result. This Court may not invalidate a state's law where that state's law can be read consistently with the Bankruptcy Code. To do so would needlessly supplant the well-reasoned judgment of the individual states and would subject many creditors to an inconsistent application of the law. Indeed, the uniform application of the law in this area is best served by recognizing, rather than striking down, the validity of state law "relation back" provisions.

Twenty-seven states have statutory "relation back" motor vehicle perfection statutes.⁸ At least seven of these

⁷ Were the Court to determine that section 547 of the Bankruptcy Code was ambiguous such that the plain language of the Code does not control the outcome of this appeal, then it would be appropriate for this Court to refer to the legislative history of section 547(e)(1)(B) to resolve the statutory ambiguity. *Patterson v. Shumate*, 504 U.S. 753, 761, 112 S. Ct. 2242, 2248, 119 L.Ed.2d 519, 524 (1992). Reference to that legislative history clearly confirms without question the error of the eighth Circuit in this appeal. See 140 Cong. Rec. S4536-37 (daily ed. April 20, 1994) (statements of Sen. Heflin and Sen. Sasser) (confirming the intent of the Senate in S. 540 (the Senate's version of the Bankruptcy Reform Act of 1994) to adopt the interpretation of the Tenth Circuit in *In re Hesser* and the Eleventh Circuit in *In re Busenlehner* insofar as S. 540 impacts upon state "relation back" perfection statutes).

⁸ See e.g., Ala. Code § 32-8-61 (1996); Alaska Stat. § 28.10.391 (Michie 1996); Conn. Gen. Stat. § 14-185 (1997); Fla. Stat. ch. 319.27 (1996); Ga. Code Ann. § 40-3-50 (1996); Idaho Code § 49-510 (1996); Ky. Rev. Stat. Ann. § 186A.195 (Michie 1996); Me. Rev. Stat. Ann. tit. 29, § 702 (West 1996); Md. Code Ann. § 13-202 (1996); Mass. Ann. Laws ch. 90D, § 21 (Law. Co-op. 1996); Minn. Stat. § 168A.17 (1996); N.H. Rev. Stat. Ann. § 261:24 (1996); N.Y. [Veh. & Traf.] § 2118 (Consol. 1996); N.C. Gen. Stat. § 20-58.2

states allow a creditor more than twenty days to file or deliver the appropriate papers to the statutorily designated official, agency or department, and therefore to be deemed "perfected" as of the date on which the lien and security interest first were created or executed.⁹ Furthermore, the Uniform Vehicle Code, as promulgated by the National Committee on Uniform Traffic Laws and Ordinances, provides for a "relation back" perfection statutory period of thirty days. Unif. Vehicle Code § 3-302(b) (1992). Accordingly, if this Court were to uphold the Eighth Circuit's decision, the "relation back" statutes in at least seven states would be preempted by the Bankruptcy Code. As discussed below, such a result is unsupportable, and ill-advised.

A. The Bankruptcy Code Does Not Preempt State "Relation Back" Provisions.

In the area of implied conflicts, this Court has long refused to preempt a state statute with federal law unless the conflict between the two is "direct and positive," such that the two laws "cannot be reconciled or consistently stand together." *Kelly v. Washington*, 302 U.S. 1, 10, 58 S. Ct. 87, 92, 82 L.Ed. 3, 10-11 (1939). See also, *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 713, 105 S. Ct. 2371, 2375, 85 L.Ed.2d 714, 721 (1985) (noting preemption in the area of implied conflicts should not occur unless reconciliation of state and federal law is a "physical impossibility"); *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U.S. 740, 751, 62 S. Ct. 820, 826, 86 L.Ed.

(1996); Okla. Stat. tit. 47, § 1110 (1996); R.I. Gen. Laws § 31-3.1-19 (1996); S.C. Code Ann. § 56-19-630 (Law Co-op. 1996); Tenn. Code Ann. § 55-3-126 (1996); Vt. Stat. Ann. tit. 23, § 2042 (1996); Wash. Rev. Code Ann. § 46.12.095 (West 1996).

⁹ Ark Code Ann. § 27-14-806 (Michie 1995) (allowing 30 days); 625 Ill. Comp. Stat. Ann. 5/3-202 (West 1997) (21 days); Mo. Rev. Stat. § 301.600 (1996) (30 days); N.M. Stat. Ann. § 66-3-202 (1996) (60 days for mobile homes or recreational vehicles); Utah Code Ann. § 41-1a-605 (1996) (30 days); Va. Code Ann. § 46.2-639 (Michie 1996) (30 days); W. Va. Code § 17A-4A-4 (1996) (60 days).

1154, 1165 (1942) (refusing preemption when state and federal law could be interpreted consistently with one another).

Applying this Court's well-settled precedent, even if the analysis in Part I of this brief were not required by the plain language of the Bankruptcy Code, that analysis is, at the very least, a valid construction and reconciliation of the Bankruptcy Code and the "relation back" perfection statute in the State of Missouri. This conclusion is all the more self-evident from the fact that the Bankruptcy Code affirmatively relies upon state law to determine how, and at what time, a creditor becomes perfected. Because state "relation back" provisions such as the Missouri statute at issue here can be, and by every indication are intended to be, construed together with the Bankruptcy Code, this Court should not adopt an interpretation of the Code that causes the two laws to conflict. Accordingly, this Court should apply state law "relation back" provisions consistently and in harmony with the Bankruptcy Code, as the plain language of the Code allows and requires.

B. The Individual States Should Be Free To Formulate Their Own "Relation Back" Provisions.

To disarm a state's power to promulgate its own "relation back" perfection statute is to ignore the very reason for leaving these matters to the discretion of the individual states. By necessity, property rights and interests are relatively "localized" matters that are uniformly left to the discretion of the states. *Cf. Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709, 33 L.Ed.2d 548, 561 (1972) (noting that property interests "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law"). These matters are properly left to the discretion of the individual states because the individual states are in the best position to develop and enforce laws that are consistent with the practices and conditions in each state.

"Relation back" perfection laws, such as the one at issue here, reflect the intent of a state's legislature to ac-

commodate the commercially reasonable time it takes to perfect a security interest, as determined by the practice and conditions in that particular state. Thus, the commercially reasonable time in Massachusetts (ten days) is apparently not the same as in West Virginia (sixty days). These different time periods reflect individual, presumably well-reasoned, determinations by the states. Absent some clear manifestation of Congress' intent, this Court should not assume that the Bankruptcy Code overrides these determinations—especially when the clear language of the Code directs otherwise.

C. Upholding State "Relation Back" Provisions Will Promote The Consistent And Uniform Application Of The Law.

Arguing against the application of state "relation back" perfection statutes, the *Loken* court relied upon the policy of promoting "a uniform rule throughout the country." 175 B.R. 56, 62. However, opinions such as *Loken* will actually promote inconsistency and uncertainty. Thus, to the extent that uniformity is a virtue, that goal is better served by upholding state "relation back" provisions.

Contrary to the likely argument of the Trustee, this Court is not being asked to extend indefinitely the grace period under section 547(c)(3)(B) of the Bankruptcy Code. In fact, this Court is not being asked to extend any time period. Rather, this Court need only recognize and give effect to the interplay between section 547(e)(1)(B) and section 547(c)(3)(B). Under section 547(e)(1)(B) of the Bankruptcy Code, the date of perfection is determined by reference to state law. Once established, section 547(c)(3)(B) of the Bankruptcy Code inquires whether that date falls within the twenty-day period after which the debtor received possession of the financed property.

This approach is consistent with and furthers the goal of "a uniform rule throughout the country." The date of perfection, as determined under state law, must still be within twenty days of the debtor's initial possession of the

property. However, just as each state's laws on how to perfect a security interest may be different, so may each state's laws differ on how to determine the date of perfection. Nonetheless, the end result is the same: to protect a lien and security interest under section 547(c)(3)(B), the date of perfection, as determined under the state's laws, must be within twenty days of the date on which the debtor first received possession of the property. It is within that context which we maintain a "uniform rule throughout the country."

Any other procedure produces absurd results. If "relation back" perfection statutes are preempted by the Bankruptcy Code, a creditor in a given state may have two dates on which he was "perfected"—one date if the debtor is in bankruptcy and another date if the debtor is not. Further, a creditor is stripped of its reasonable expectation that it will be perfected if it follows state law. There is no conceivable justification for this Court to impose such a burden on creditors. Indeed, as noted throughout this brief, there is every reason not to impose such a result.

CONCLUSION

For the foregoing reasons, the AAMA, AIAM, NADA and AFSA, as amici curiae, respectfully pray that this Court will reverse the judgment of the Eighth Circuit Court of Appeals and remand this case to the bankruptcy court with directions that judgment be entered in favor of Fidelity and against the Trustee.

Respectfully submitted,

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